

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contracts
Priority Mail—Non-Published Rates 10
(MC2011-15)

Docket No. CP2011-51

ORDER REQUIRING ADDITIONAL INFORMATION

(Issued December 29, 2016)

On February 3, 2011, the Commission approved the addition of Priority Mail—Non-Published Rates (PMNPR) as a category, and Priority Mail—Non-Published Rates 1 as an underlying product, on the competitive product list.¹ Consistent with the approach for other Non-Published Rates products, the Commission approved the PMNPR model customer contract and authorized the Postal Service to enter into contracts based on the model contract, subject to several conditions. Order No. 661 at 8-10. The Commission also directed the Postal Service to file “[a] copy of each contract along with the financial model inputs used to generate rates for each

¹ Docket Nos. MC2011-15 and CP2011-51, Order Approving Addition of Priority Mail—Non-Published Rates 1 to the Competitive Product List, February 3, 2011, at 9 (Order No. 661).

contract . . . within a reasonable time, e.g., within 10 days of the effective date of the contract.”²

From June 9, 2011, through December 22, 2014, the Postal Service filed nine PMNPR contracts with the Commission.³ Four of those nine PMNPR contracts were filed with the Commission outside the applicable 10-day timeframe.⁴

On December 28, 2016, the Postal Service filed notice of entering into 238 PMNPR customer agreements.⁵ These 238 customer agreements went into effect during calendar year 2016, ranging in dates from January 17, 2016, through December 16, 2016. Notice, Attachment A. A motion requesting that the Commission accept the late filing accompanied the Notice.⁶

Acknowledging that Order No. 661 requires the Postal Service to file notice of each new PMNPR customer agreement “within a ‘reasonable time’ of the contract’s effective date,”⁷ the Postal Service characterizes the majority of these PMNPR agreements as “a significant backlog” that “became effective in the early part of 2016.” Motion at 1. The Postal Service explains that “[o]ver the past year, the Postal Service converted a large number of customers from Commercial Plus pricing (CPP) agreements to PMNPR agreements.” *Id.* The Postal Service acknowledges that it lacked “established procedures . . . for processing such a large number of PMNPR

² *Id.* at 9. The Postal Service must also file data reports pertaining to any contracts within 30 days of expiration of each contract. *Id.* at 8, 10.

³ See, e.g., Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0008 and 0009, December 22, 2014.

⁴ Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0008-0009, December 22, 2014 (Notice 0008-0009); Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0007-0008, December 27, 2013; Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0004, August 3, 2012. One contract ending in serial number 0008 was filed late for both its initial term and renewal. Notice 0008-0009.

⁵ Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010 Through 0247, December 28, 2016 (Notice).

⁶ Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010-0247, December 28, 2016 (Motion).

⁷ Motion at 1, quoting Order No. 661 at 8, 10.

agreements within a short time period” and “expects to utilize the procedures it has developed over the course of this year to provide the Commission with reasonable notice of all future PMNPR agreements, in accordance with Order No. 661, now that the backlog has been cleared.” *Id.* at 2. The Postal Service also attributes the late filing “in part” to the increased number of negotiated service agreement filings requiring Commission approval. *Id.* The Postal Service states that “[r]egrettably, the notice for the majority of the agreements being filed today was not filed with the Commission in a timely manner, relative to each contract’s effective date.” *Id.* at 1.

Nearly 70 percent of the agreements filed on December 28, 2016, became effective before June 1, 2016. Over 85 percent of the agreements filed on December 28, 2016, became effective during fiscal year (FY) 2016 (that is before October 1, 2016). None of the agreements filed on December 28, 2016, were filed within the applicable 10-day timeframe.

The Commission’s procedural rules provide:

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer *upon motion for good cause shown* unless the time for performance or filing is limited by statute. Requests for extension of time shall be by *written motion timely filed with the Commission stating the facts on which the application rests*, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a matter of discretion be acted upon without waiting for answers thereto.

39 C.F.R. § 3001.16 (emphasis added).

The Motion lacks adequate justification demonstrating good cause for extending the time for filing notice of these 238 PMNPR agreements. The number of agreements involved and the length of the delay is indicative of a systemic and widespread problem. The Commission is concerned about the Postal Service’s failure to comply with the Commission’s order in this proceeding. Non-Published Rates products such as PMNPR

give the Postal Service flexibility to enter into agreements that meet set conditions without seeking prior approval from the Commission. In light of the additional flexibility afforded to the Postal Service with these types of agreements, the associated reporting requirements are a critical part of the regulatory regime. The Postal Service's failure to provide necessary information timely has hindered the Commission's ability to monitor PMNPR's compliance with regulatory requirements and indicates the Postal Service may not have appropriate procedures in place to ensure that it meets the requirements set out for Non-Published Rates products.

As a result, by January 6, 2017, the Postal Service shall file an explanation demonstrating good cause for the Motion and providing a thorough explanation of why the Commission should not cancel the affected PMNPR agreements in light of the Postal Service's 243 violations of Order No. 661.⁸ Such an explanation must also include a detailed description of the steps the Postal Service will take to prevent untimely filings in this proceeding in the future.

It is ordered:

1. By January 6, 2017, the Postal Service shall file an explanation demonstrating good cause for the Motion, explaining why the Commission should not cancel the affected PMNPR agreements, and stating the steps it will take to prevent future untimely filings in this proceeding.
2. The Motion for Late Acceptance of Customer Contract Filing Notice for Priority Mail—Non-Published Rates Serial Number Ending: 0010-0247, filed December 28, 2016, remains pending.

By the Commission.

Stacy L. Ruble
Secretary

⁸ In addition to the 238 violations listed in the Notice, the Postal Service had late filings on five other occasions in this docket. See n.4 and accompanying text.